

## **MINUTES**

### **INSOLVENCY LAW COMMITTEE OF THE BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA**

**September 17, 2004**

The regularly scheduled meeting of the Insolvency Law Committee of the Business Law Section of the State Bar of California was held on September 17, 2004, at the offices of Procopio, Cory, Hargreaves & Savitch, LLP in San Diego, California and by video conference at Reed Smith LLP in Oakland, California.

The following members attended the meeting in person, by video conference or by telephone:

Geraldine Valdez  
Paul Pascuzzi  
Molly Baier  
Mike Buckley  
Elizabeth Berke-Dreyfuss  
Lynn Ernce  
Lisa Fenning  
Eve Karasik  
Michael Koch  
Howard Kollitz  
Greg Lunt  
Donna Parkinson  
Mark Porter  
Cliff Stevens  
Russell Clementson (Ex Officio)  
Ben Young (Ex Com Liaison)

The following members did not attend the meeting: David Bertenthal, Brian Davidoff, Bob Franklin, Radmila Fulton, Judy Gibbs, Dan Schechter, Tracy Schweitzer, David Shemano, Colin Wied, and Sandy Lavigna (Ex Officio).

Geraldine Valdez called the meeting to order at approximately 10:00 a.m.

**1. Approval of Minutes: July 23, 2004.**

The minutes of the July 23, 2004 meeting were approved without incident.

**2. Membership.**

Geraldine Valdez announced that the Executive Committee approved our Committee's appointments of Mary Jo Wiggins, Barry Glaser, and Craig Wolfe to the Committee next year. Peter Bronson has invited all new members to our meeting next month. The new terms officially start at the end of the State Bar Annual Meeting. The Committee continued its discussions regarding the three remaining vacant positions in terms of qualifications and diversity in

geography, gender, and practice area, among other things. Committee members were encouraged to seek out qualified candidates and encourage them to apply.

### **3. Meeting Schedule.**

No change in the meeting schedule for the balance of the year. Geraldine Valdez raised the issue of video conferencing and attendance at meetings. This issue was tabled for further discussion at the next meeting.

### **4. Budget.**

Geraldine Valdez reported that the Committee is under budget this year. Geraldine will obtain the actual numbers for next meeting.

### **5. Subcommittee – Assignments.**

Liz Berke-Dreyfuss volunteered to be the new Education Subcommittee Chair and Mike Koch volunteered to be the new Legislation Subcommittee Chair. The Committee approved both appointments. Once the new members are present, they will need to be assigned to subcommittees.

### **6. Programs and Education Subcommittee Report.**

#### **A. October 2004 Annual Meeting.**

Mark Porter reported on the status of the program on asset sales entitled, “Practical Help for Business Lawyers: A Primer on Bankruptcy Asset Sales,” which will be held Friday, October 8, 2:15 p.m. to 4:15 p.m. Mark reports that he was unable to find a judge for the panel, but instead found Nels Nelson to participate. Mark reports that the panel is ready for a great program. Lisa Fenning reported on the status of the program on bankruptcy fraud entitled, “Bankruptcy Fraud after Enron: Filing Bankruptcy Without Going to Jail,” which will be held Thursday, October 7, 2:15 p.m. to 4:15 p.m. Lisa reports that they also do not have a sitting judge on the panel because of the NCBJ date conflict, but that the panel is ready for a great program. Geraldine will attempt to find out sign up information for the next meeting. Liz Berke-Dreyfuss reports that the State Bar is videotaping the fraud program, if the panelists turn in their consent forms. Then, the seminar will be available for viewing and MCLE credits on the website.

#### **B. Winter SEI.**

The Committee has submitted applications for two programs at the Winter SEI to be held in January 2005 in San Francisco. The SEI primarily attracts business lawyers. The two programs are “Discharging Taxes in Bankruptcy” and “Bankruptcy 101.” There is considerable competition for the available slots at the SEI, so if only one is available the tax program will be presented. Mike Koch will work on the tax program and Liz Berke-Dreyfuss will work on the Bankruptcy 101 program. Howard Kollitz and Eve Karasik will assist them. The Committee discussed possible panelists for each program. At the moment, however, the Committee is waiting to hear whether it has one or more of the available slots for programs. Until it is known whether we have one or both programs, it is premature to contact possible panelists. Geraldine will let Mike and Liz know when the selections for programs are made. Peter Bronson is

handling the issue regarding deadlines for naming panelists that expire prior to us knowing whether we have slots for a program.

**C. Reimbursement for Speakers Dispute.**

Geraldine Valdez will email Ben Young about reimbursement for Mike Koch for his expected travel expenses for the Winter SEI program. The State Bar policy is that speakers do not receive reimbursement absent special circumstances and prior approval.

**7. Website Report and Constituency Outreach Project and Report from Constituency/Outreach/Website Subcommittee.**

Mike Buckley reported for the website, et al. subcommittee. Mike reported that the website migration is essentially complete. Mike requests that all Committee members review the website and provide any suggestions for improvement, updates or corrections. Updates can be posted every two weeks. Mike reported that we can post any seminar materials after the seminar, simply by sending completed materials to Mike or Bob Franklin in pdf format. The Committee is continuing its ongoing efforts to solicit emails for e-blast lists. Paul Pascuzzi volunteered to compile all the emails and contact information from the California Bankruptcy Forum website for adding to the e-blast list. Once that project is completed, Geraldine suggested that the email lists item be removed from the agenda. Liz Berke-Dreyfuss reminded us that the State Bar needs lead time to video a program. The Winter SEI tax program would be a good program to video. Geraldine noted that if the Committee's programs make money for the Business Law Section budget, we should be able to use some of that money for speaker reimbursement.

**8. Progress Reports on Current Projects from Legislation Subcommittee.**

**A. New ALP re Lis Pendens.**

This matter was tabled for discussion at the next meeting when Dan Schechter can present it.

**B. New ALP re Attachment Liens.**

Geraldine Valdez recognized and thanked Dan Schechter for all of his energy and efforts on ALP's this last year. The discussion of the new ALP re attachment liens was tabled for next meeting so Dan could participate. Lisa Fenning noted that there was a split in the circuits as to whether a state may adopt a rule applicable only in bankruptcy. Lisa volunteered to send Dan an email about the issue for further discussion at the next meeting.

**B. New Projects.**

i. Model Real Estate Order and Findings. Geraldine Valdez had her colleague review the revised order and findings. Some changes were made. Paul Pascuzzi volunteered to review the changes and contact Geraldine. The Committee's sense was that it was time to get this project completed. Rob Harris is in the process of finding out if the Executive Committee needs to approve the revised order and findings.

ii. CCP §§ 697.530 and 708.110 et seq. Peter Bronson continues to work with the UCC Committee to identify the issues and solutions to the problems with the statutes

and/or educating the bar about these provisions. Geraldine Valdez noted that the UCC Committee now has two lists of secret liens. The UCC Committee is presenting a program on secret liens at the Annual Meeting. Peter may be a panelist in that program.

iii. H.R. 975 (Bankruptcy Reform Act). Nothing new to report. The bill is not dead, but it is not moving either. The sense is that it may be broken apart and considered in pieces next year.

## **9. Legislation Subcommittee's New Bill Report.**

### **A. State Bills.**

Greg Lunt reported that generally there was nothing new to report.

### **B. CLRC.**

With regard to the California Law Review Commission survey on the uses of the assignment for benefit of creditor provisions, Mark Porter and Geraldine reported that some responses to the survey are being returned. Mark will check on the response rate. Mike Koch had nothing new to report regarding the CLRC memo discussing proposed revisions to the mechanics lien law. Mike will continue to monitor the project and report to the Committee.

### **C. Federal Bills.**

Regarding the proposed revisions to avoidance law in SB 1970 and SB 832, Mark Porter asked Tim Sparks, a lawyer who has experience in executive compensation, to review the memo prepared by Mark and Paul Pascuzzi. Tim's response is in the materials at page 110. Mark suggested that since these bills are going nowhere at the moment, no further energy be invested. Mark and Paul will continue to monitor the status of the bills so that the project can be resumed if they start to move before the end of the session. Greg Lunt reported no further change in status on HR 2120, SB 1264 and SB 1331.

### **D. State Bulk Sales Laws.**

At the February meeting, the Committee voted to join in the UCC Committee's report recommending the repeal of the bulk sales laws. Geraldine Valdez reported that the UCC Committee is working on a timetable of this being a 2005 project.

## **10. Update from Ex-Comm Liaison.**

Ben Young gave the report from the Executive Committee. Ben noted that the Executive Committee has been busy with appointments the last few months and addressing issues with the less active committees. Ben reported that the ILC is viewed as active and strong. Ben mentioned that the Executive Committee is discussing the issue of raising dues for the Business Law Section from \$60 per year to either \$65 or \$70. After much discussion, the general sense of the Committee is that an increase of \$5 to \$10 is not significant enough to make a difference in whether someone would join.

#### **11. Publications Subcommittee Current Projects Report.**

Geraldine Valdez reported that Peter Bronson completed and submitted the mandatory article for the Business Law News on Secret Liens. Geraldine noted Paul Pascuzzi's article was published in the June edition. Geraldine noted that anyone that does articles for the BLN should note that they are on the Committee so that the Committee gets credit for the article too. Geraldine is working on the mandatory California Legislative Bulletin Annual Report.

#### **12. New Business.**

The Committee discussed and debated the legal specialization name change. Geraldine Valdez submitted a letter on behalf of the Committee to the State Bar Office of Certification. The State Bar is considering changing the name of the bankruptcy specialization from "Personal and Small Business Bankruptcy Law" to "Bankruptcy Law." The concern was that the name change would imply that attorneys certified have experience and training that includes chapter 11 work. Mike Koch reported that the test, at least when he was involved with the creation and grading of the test in the 1990's, focused primarily on chapter 7 and chapter 13 work. Lisa Fenning suggested that we need more information as to the focus of the current tests given and what the certification purports to mean. Geraldine will contact the Office of Certification to obtain further information. Geraldine also will find out if the Office of Certification has already acted on the name change or if there is still time for further comment. The Committee also discussed the need for Executive Committee approval for any official statement of position by the Committee. For the letter sent to the Office of Certification, the Committee discussed the timing and who at the Executive Committee level was aware of the letter prior to it being sent.

#### **13. Adjournment.**

The meeting was adjourned at approximately 12:05 p.m.

Respectfully submitted,  
Paul J. Pascuzzi